

Exhibit M-N

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAVID AGOADO, LEEANN MCNALLY,
CRAIG MOORE, CHRIS PIERRE, THOMAS
SHARKEY, MADGE SHIPMAN, and DOREEN
VAZQUEZ individually and on
behalf of all others similarly situated,
Plaintiffs,

-against-

MIDLAND FUNDING, LLC, MIDLAND
FUNDING, LLC. doing business in
New York as MIDLAND FUNDING OF
DELAWARE, LLC, and MIDLAND
CREDIT MANAGEMENT, INC.,
Defendants.

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5036 Jericho Turnpike
Commack, New York

July 13, 2015
10:28 a.m.

Examination Before Trial of the
Plaintiff, THOMAS SHARKEY, pursuant to
Order, before CINDY A. AFANADOR, a Notary
Public of the State of New York.

CINDY AFANADOR COURT REPORTING, INC.
516-491-2694
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1 Thomas Sharkey
2 T H O M A S S H A R K E Y, called as a witness,
3 having been duly sworn by a Notary Public, was
4 examined and testified as follows:

5
6 THE COURT REPORTER: Please state
7 your full name for the record.

8 THE WITNESS: Thomas Sharkey.

9 THE COURT REPORTER: What is your
10 address?

11 THE WITNESS: 606 Birch Hollow
12 Drive, Shirley, New York 11967.

13 EXAMINATION BY

14 MR. CURTIS JOHNSON:

15 Q. Hello. My name is Curtis
16 Johnson. I am an associate with Davidson
17 Fink. I am representing the law firm Forster
18 & Garbus in connection with this lawsuit, your
19 lawsuit against it and a number of other
20 defendants.

21 MR. CURTIS JOHNSON: Do counsel
22 on the phone want to state their
23 appearances?

24 MR. ARLEO: Sure. Robert Arleo,
25 counsel for Rubin & Rothman.

1 Thomas Sharkey

2 two years.

3 I left Jildor, was the New York
4 manager for Sacha London for two years and I
5 have been back at Jildor Shoes ever since.

6 Q. Is it fair to say you have worked
7 in retail your entire life?

8 A. Yes.

9 Q. You testified earlier that you
10 live at 606 Birch Hollow Drive, Shirley,
11 New York; when did you move there?

12 A. I moved there almost six years
13 ago. December 13th will be six years that I
14 moved there.

15 Q. So that would be 2009?

16 A. Um-hum.

17 THE COURT REPORTER: Yes?

18 THE WITNESS: Yes.

19 Q. Where did you live before 606
20 Birch Hollow Drive?

21 A. 28 Criss, C-R-I-S-S, Street, Lake
22 Ronkonkoma, New York.

23 Q. How long did you live at 28 Criss
24 Street?

25 A. 13 years.

1 Thomas Sharkey

2 Q. So I'm doing math really quick in
3 my head.

4 1996 to 2009?

5 A. Correct.

6 Q. Is that right?

7 A. Because I moved there back into
8 that house after my divorce.

9 Q. Who do you currently live with,
10 if anyone?

11 A. Myself.

12 Q. You mentioned you had a divorce;
13 are you currently married?

14 A. No.

15 Q. When were you married?

16 A. August 14, 1976.

17 Q. And you were divorced in '96?

18 A. Yes.

19 Q. What was your spouse's name?

20 A. Lynn.

21 Q. Last name?

22 A. Maiden name?

23 Q. Or current last name?

24 A. Sharkey, S-H-A-R-K-E-Y.

25 Q. What was her maiden name?

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Thomas Sharkey

A. Lavelle, L-A-V-E-L-L-E.

Q. Do you have any children?

A. Yes.

Q. How many?

A. One.

Q. Son or daughter?

A. Son.

Q. How old is your son?

A. 27.

Q. He doesn't live with you, right?

A. No.

Q. Is he financially dependent on
you?

A. Somewhat.

Q. Do you claim him on your taxes as
a dependant?

A. No, I don't.

Q. How is he financially dependent
on you?

A. I help him financially.

Q. Okay.

If you had to estimate an amount
you give him on an annual basis, what would
that be?

1 Thomas Sharkey

2 What banks have you done banking
3 with in your lifetime?

4 A. As far as savings and checking
5 accounts?

6 Q. Sure.

7 A. Chase.

8 Q. Have you used any other banks?

9 A. As far as back as I can remember,
10 it's been Chase.

11 Q. Okay.

12 Have you had credit cards in your
13 lifetime?

14 A. I have.

15 Q. Do you know what banks issued the
16 credit cards?

17 A. Well, I know Bank of America.
18 I'm trying to remember.

19 Quite frankly, over the years, I
20 have not had that many credit cards.

21 Q. Okay.

22 What is not that many?

23 A. Over the years, maybe four.

24 Q. Okay.

25 You said one of them was Bank of

1 Thomas Sharkey

2 America?

3 A. One of them was Bank of America,
4 yes.

5 Q. Did you have one with Chase?

6 A. I have a Chase debit credit card.

7 Q. Okay.

8 Do you have any store credit
9 cards?

10 A. Kohl's.

11 Q. Have you ever had any other store
12 credit cards?

13 A. I believe Macy's.

14 Q. Have you ever borrowed from a
15 bank to buy a car?

16 A. Yes.

17 Q. What banks?

18 A. Capital One and currently
19 G.M. Financial.

20 Q. Do you remember when you got your
21 original mortgage on your house at 606 Birch
22 Hollow Drive; do you remember what bank you
23 got that from?

24 A. I don't have a mortgage at 606
25 Birch Hollow Drive.

1 Thomas Sharkey

2 A. Correct.

3 Q. And if you make payments to the
4 bank after you've borrowed on the card, it
5 restores your ability to use the card again,
6 right?

7 A. Correct.

8 Q. Okay.

9 Was it your practice with your
10 Bank of America card to make purchases on a
11 card and then make payments on the card and
12 make additional purchases on the card?

13 MR. FRANK: Objection to the form
14 of the question.

15 Compound question.

16 Q. Do you understand what I mean by
17 that?

18 A. No.

19 Q. Okay.

20 When you got your Bank of America
21 card, did you -- you used the card, right?

22 A. Yes.

23 Q. When you used the card, did you
24 use it all the way up to the credit limit?

25 MR. FRANK: Objection to the form

1 Thomas Sharkey

2 to make those payments?

3 MR. FRANK: Objection to the form
4 of the question.

5 What happened when --

6 Q. What actions did your lender take
7 when you failed to make payments on your
8 mortgage for 28 Criss Street?

9 A. They tried to work things out
10 with me.

11 Q. Okay.

12 Did you ever fail to make
13 payments on the Bank of America credit card?

14 A. Yes.

15 Q. And did you miss one payment or
16 multiple payments on your Bank of America
17 credit card?

18 A. Multiple.

19 Q. And did there come a time when
20 Bank of America cut off your line of credit?

21 A. Yes.

22 Q. Okay.

23 Did they take any other actions
24 against you to try to collect?

25 A. I don't remember the specifics,

1 Thomas Sharkey

2 it was a long time ago.

3 Q. Okay.

4 Do you remember when it was?

5 A. I would think it was around 2007
6 or '8, maybe.

7 Q. Did you eventually pay off the
8 debt you owed to Bank of America?

9 A. Not directly to Bank of America,
10 no.

11 Q. Okay.

12 Who did you pay that debt off to?

13 A. I paid it off to Midland Funding.

14 MR. FRANK: Objection to the form
15 of the question.

16 MR. CURTIS JOHNSON: All right.

17 Q. Have you ever failed to pay
18 taxes?

19 A. No.

20 Q. Do you generally understand when
21 loans are not repaid, do you understand what
22 actions creditors might take against you?

23 A. Yes.

24 Q. What actions might they take?

25 A. They can try to work with you.

1 Thomas Sharkey

2 Q. Do you remember what your
3 interest rate was?

4 A. No.

5 Q. Do you remember how frequently
6 you were required to make payments on the
7 card?

8 A. I believe monthly.

9 Q. Okay.
10 There came a time when you
11 stopped making payments on the card, right?

12 A. Yes.

13 Q. Why did you stop making payments?

14 A. Because financially, things were
15 upside down in my world and I had a -- to
16 prioritize what I could pay at that point.

17 Q. Okay.

18 What did Bank of America do, if
19 anything, in response to your stopping making
20 payments?

21 A. This was a long time ago.

22 Q. Okay.

23 A. So I am going to answer your
24 questions the best of my ability, okay.

25 I remember speaking to someone at

1 Thomas Sharkey
2 Bank of America. My house was upside down, it
3 was under water, if you understand what I am
4 explaining to you.

5 My house had been refinanced and
6 it was upside down. I had a lot of things
7 going on in my life and I believe I spoke to
8 someone from Bank of America and I told them
9 what was going on, that I was being forced to
10 sell my house in a short sale. It was a very
11 old house, the heating system was going, so
12 many things going on at that point in my life
13 that I was under water.

14 So I explained that I do take
15 care of my responsibilities, I do take care of
16 my debts and she was a very nice woman, I
17 can't remember her name, because like I said,
18 it was a long time ago.

19 I said, look, until I get onto my
20 feet, I would like to pay you \$50 a month.
21 She said well, I will speak to my supervisor
22 and get back to you.

23 She got back to me and said, I am
24 so sorry, Mr. Sharkey, we cannot accept \$50 a
25 month. We are going to give you one more

1 Thomas Sharkey
2 chance, can you please pay this debt and give
3 us more than \$50. I said the most I can give
4 you right now, and it was the most I can give.
5 I mean you have to prioritize how you are
6 going to live and keep a roof over your head
7 and how you are going to eat.

8 I said no, 50 is the most I can
9 give you at this point in time. She got back
10 in touch with me and said, I'm sorry,
11 Mr. Sharkey, we are going to have to write
12 this off as a bad debt.

13 I said well, I'm sorry that you
14 have to do that, but there is nothing I can
15 do, my hands are tied. I know it's going to
16 affect my credit score, but that's my credit
17 score, that's my consequences. And I said, I
18 am very sorry, so if you have to write it off
19 as a bad debt, write it off as a bad debt and
20 I thought that was the end of it.

21 Q. Okay.

22 What is your understanding of
23 what happens when a bank writes something off
24 as a bad debt?

25 A. My understanding is that they

1 Thomas Sharkey

2 Q. Have you ever heard the term bad
3 debt in connection with your job at Jildor
4 Shoes?

5 A. My debt?

6 Q. No, have you ever heard the term
7 bad debt in connection with your
8 responsibilities at Jildor Shoes?

9 A. No.

10 Q. Have you ever taken a finance
11 class?

12 A. No.

13 Q. Have you ever taken an economics
14 class?

15 A. No.

16 Q. So you testified it was your
17 understanding that when Bank of America told
18 you that they were treating your debt as a bad
19 debt, that it would affect your credit score,
20 but you wouldn't have to repay the loan; is
21 that right?

22 A. Right.

23 MR. FRANK: Objection.

24 Mischaracterizes the witness'
25 testimony.

1 Thomas Sharkey

2 Q. You can answer.

3 A. Repeat the question, please.

4 (Record read.)

5 A. Correct.

6 Q. Did there come a time after Bank
7 of America told you they were treating your
8 loan as a bad debt that you learned that they
9 had not, in fact, decided not to collect on
10 your debt?

11 MR. FRANK: Objection to the form
12 of the question.

13 Double negative.

14 Q. Do you understand the question?

15 A. No.

16 Q. So Bank of America decided to
17 treat your debt as a bad debt; is that right,
18 is that your understanding?

19 A. Yes.

20 Q. After they decided to treat your
21 debt as a bad debt and they told that to you,
22 right?

23 A. Yes.

24 Q. After they told you that, did
25 there come a time when either Bank of America

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Thomas Sharkey

or some other entity tried to collect on that debt?

A. Yes.

Q. Okay.

Do you know when that was?

A. I don't know the date when that was.

Q. Okay.

A. But I know that it was --

Q. Who was the entity that tried to collect on your debt?

A. Midland Funding.

Q. How did you find out that Midland Funding was trying to collect on your debt?

A. I believe I received some kind of correspondence.

Q. Okay.

Did you get that at 28 Criss Street or 606 Birch Hollow Drive?

MR. FRANK: Objection to the form of the question.

Q. If you remember?

MR. FRANK: Assumes it was at one of those locations.

1 Thomas Sharkey

2 A. It was one, I don't remember.

3 Q. Okay.

4 So you got correspondence from
5 Midland Funding; what did you do when you
6 received correspondence from Midland?

7 A. I am trying to remember. I
8 really -- it was such a long time ago, I don't
9 really remember. All I remember was that I
10 really did think that the whole thing was done
11 with Bank of America, so I didn't really
12 understand it.

13 Q. Okay.

14 So you got correspondence and you
15 thought you didn't have to pay the debt; is
16 that right?

17 A. Yeah, I thought it was written
18 off as a bad debt.

19 Q. Did you take any steps to
20 investigate why Midland was contacting you?

21 A. No, I just thought it was someone
22 trying to collect money on something that was
23 already taken care of that was done, so I
24 just -- basically, I disregarded that.

25 Q. Okay.

1 Thomas Sharkey

2 Did you ever receive any phone
3 calls from Midland Funding?

4 A. I don't recall Midland Funding.

5 Q. Okay.

6 Did you ever call Midland Funding
7 yourself?

8 A. Not to my best recollection, no.

9 Q. Did you ever write Midland
10 Funding any letters?

11 A. Not that I remember, no.

12 Q. Did you ever e-mail Midland
13 Funding?

14 A. No.

15 Q. Do you use e-mail?

16 A. Occasionally.

17 Q. Okay.

18 Did you keep any copies of the
19 correspondence you received from Midland
20 Funding?

21 A. No.

22 Q. Have you ever heard of Forster &
23 Garbus?

24 A. Yes.

25 Q. When did you first hear of

1 Thomas Sharkey

2 Forster & Garbus?

3 A. I would say approximately three
4 years ago.

5 Q. How did you first hear of
6 Forster & Garbus?

7 A. I received a letter in the mail.

8 Q. Three years ago you were living
9 at 606 Birch Hollow Drive; is that right?

10 A. Three years ago, yes.

11 Q. So is it likely you received that
12 correspondence in the mail at 606 Birch Hollow
13 Drive?

14 A. From Forster & Garbus?

15 Q. From Forster & Garbus.

16 A. Yes.

17 Q. Do you remember what the
18 correspondence said?

19 A. No.

20 Q. Did you receive more than one
21 piece of correspondence from Forster & Garbus?

22 A. I don't remember.

23 Q. Did you ever receive any phone
24 calls from Forster & Garbus?

25 A. Yes.

1 Thomas Sharkey

2 Q. Do you know how many?

3 A. Many.

4 Q. Do you know when you received
5 your first phone call from Forster & Garbus?

6 A. I'm trying to think.

7 It was about three years ago.

8 Q. So around the time that you got
9 the correspondence?

10 A. Right.

11 Q. Do you remember what those phone
12 calls were about?

13 A. Yes.

14 Q. What were they about?

15 A. They -- there was a gentleman on
16 the line, who was not much of a gentleman, who
17 was telling me that Midland Funding has
18 retained them as attorneys because my debt
19 from Bank of America was sold to Midland
20 Funding, and that they were representing
21 Midland Funding and they were trying to
22 collect the money from me. And then I tried
23 to explain to them to my knowledge it was
24 written off as a bad debt and that that was
25 the pass. I am trying to get my life

1 Thomas Sharkey
2 together. It did affect my credit score, I'm
3 sorry, and that was that.

4 Q. Okay.

5 A. And there was continuing
6 harassing phone calls at my place of business.

7 Q. Did you ever call Forster &
8 Garbus yourself?

9 A. Yes.

10 Q. Why did you call them?

11 A. Because they were being
12 relentless in calling me, so I called them.

13 Q. Okay.

14 And what did you discuss when you
15 called them?

16 A. I basically discussed what I am
17 discussing with you right now, that I was
18 going through a very bad situation in my life,
19 that I thought that it was written off as a
20 bad debt and I didn't really understand what
21 was going on and I was told that I need to pay
22 this money back. And I said I can pay you \$50
23 a month, that's all I can pay. And they said
24 that's not acceptable, we'll do whatever we
25 have to do to get our money.

1 Thomas Sharkey

2 Q. Okay.

3 Did you understand what they
4 meant when they said do anything they have to
5 do?

6 A. I just took it for what he said,
7 we'll do whatever we have to do to get our
8 money.

9 Q. Okay.

10 Did you understand one of those
11 things that Forster & Garbus may do would be
12 to sue you?

13 A. I thought that was possible.

14 Q. Okay.

15 Did you ever, in your
16 conversations with Forster & Garbus, ask them
17 to provide you with any supporting
18 documentation to prove that they were allowed
19 to collect the debt?

20 A. No.

21 Q. Why not?

22 A. Because I didn't think I really
23 owed that debt. I thought it was written off.
24 I really didn't want to give much attention to
25 it. I had too many other things to give my

1 Thomas Sharkey
2 attention to at that point in my life.

3 Q. So Forster & Garbus called to
4 collect a debt that you didn't believe you
5 owed; is that right?

6 A. Correct.

7 Q. And you didn't ask them to prove
8 that you owed the debt?

9 A. No, I didn't. I told them it was
10 written off as a bad debt. I told them I
11 offered to give \$50 a month and I told -- I
12 was told that's not acceptable, we are sorry
13 for what you are going through, we are writing
14 you off as a bad debt. And I believed that
15 was the end of it.

16 I didn't want to give any more of
17 my energy to this. I figured it was over,
18 done with, let me get on with my life and what
19 I need to do in my life.

20 Q. Did there come a time when your
21 understanding of your obligation to repay the
22 debt changed?

23 A. Repeat the question.

24 MR. FRANK: Objection to the form
25 of the question.

1 Thomas Sharkey
2 different mortgage lender and you are
3 obligated to pay the new mortgage lender,
4 right?

5 A. Yes.

6 Q. You testified that you now
7 understand that a credit card lender may
8 transfer obligation that you owe to that
9 lender to another lender, right?

10 A. Yes.

11 Q. Okay.

12 When you were discussing your
13 debt, your Bank of America debt with Forster &
14 Garbus, did you have an understanding then
15 that Bank of America may have transferred your
16 obligation to Midland Funding?

17 A. It was my understanding that they
18 sold the debt to Midland Funding.

19 Q. Okay.

20 And --

21 A. For the amount, I had no idea
22 what amount, so I don't know.

23 Q. You understood that that is what
24 occurred?

25 A. At that point I understood that

1 Thomas Sharkey

2 that's what occurred.

3 Q. Okay.

4 Did you have any reason to doubt
5 at that time that the sale of your debt from
6 Bank of America to Midland Funding was
7 legitimate?

8 MR. FRANK: Objection to the form
9 of the question; reason to doubt.

10 A. I don't understand the question.

11 Q. Okay.

12 When you learned that your Bank
13 of America debt was sold to Midland Funding,
14 you learned that from getting a letter in the
15 mail from Midland Funding, right?

16 A. Yes.

17 Q. Okay.

18 When you got that letter in the
19 mail from Midland Funding, did you have any
20 reason to believe that the sale of your debt
21 from Bank of America to Midland Funding wasn't
22 legitimate?

23 A. I didn't know if it was
24 legitimate or not. I didn't know how much it
25 was for. I don't know.

1 Thomas Sharkey

2 If you were to glance at it, if
3 you had noticed a listed purchase that you
4 didn't actually make, would you have done
5 something about that? What would you have
6 done?

7 A. I would have disputed it.

8 Q. Did you ever dispute any
9 purchases with Bank of America?

10 A. Not to my recollection.

11 Q. Okay.

12 So you understood when you were
13 contacted by Midland Funding or Midland Credit
14 Management, I am going to use Midland
15 generically, there are two different
16 companies.

17 A. Yes.

18 Q. When you were contacted by
19 Midland, did you have any reason to believe
20 that Bank of America didn't sell your debt to
21 Midland?

22 A. I didn't know what to believe at
23 the time.

24 Q. Okay.

25 Did you take any steps to

1 Thomas Sharkey

2 investigate whether, in fact, Bank of America
3 sold your debt to Midland?

4 A. No.

5 Q. No, okay.

6 Again, when you were contacted by
7 Forster & Garbus on behalf of Midland to
8 collect the debt that had been transferred to
9 Midland, did you take any steps to investigate
10 whether either Forster & Garbus -- well, did
11 you take any steps to determine whether
12 Forster & Garbus was authorized to direct that
13 debt on behalf of Midland?

14 A. No.

15 Q. Did you take any steps when you
16 were contacted by Forster & Garbus about the
17 Midland debt that was originally your Bank of
18 America credit card, to determine whether
19 Midland was authorized to collect that debt at
20 that point?

21 A. No.

22 Q. Okay.

23 Why not?

24 A. I don't know.

25 Q. It was your testimony earlier,

1 Thomas Sharkey

2 Q. Did either of them tell you you
3 were obligated to pay the debt to
4 Forster & Garbus?

5 A. No. I don't remember, no.

6 Q. Did you discuss what bad debt
7 meant with either Michael or Joseph?

8 A. It was a long time ago. I really
9 don't remember. I just asked them to speak on
10 my behalf. I thought that they would
11 understand a little bit better than I would
12 understand. And like I said, I was going
13 through a lot of anxiety at the time, so I
14 figured they might be able to explain this to
15 me or to come upon some type of agreement with
16 this gentleman from Forster & Garbus.

17 Q. What sort of agreement did you
18 hope they would come to?

19 A. That maybe they could come across
20 a type of settlement.

21 Q. When you say "settlement," what
22 sort -- what do you mean by settlement?

23 A. First of all, I didn't receive an
24 itemized account of what I owed.

25 Q. Okay.

1 Thomas Sharkey

2 A. So first of all, I would have
3 liked to have seen an itemized account of
4 everything that I owed and see, because of the
5 circumstances, if you understand how some
6 credit cards work, they will say, all right,
7 if you owe this money, pay us this amount and
8 we will call it settled.

9 Q. When you say settlement, you mean
10 you were hoping to pay an amount less than you
11 owed?

12 A. A percentage like you would do on
13 some credit cards, if you follow what I am
14 saying.

15 Q. Okay.

16 Now, you said you were hoping to
17 receive an itemized statement; did you ever
18 ask Forster & Garbus for an itemized
19 statement?

20 A. I don't think so, no.

21 Q. Why not?

22 A. I don't know.

23 Q. Do you remember how many calls
24 you had between you personally and Forster &
25 Garbus?

1 Thomas Sharkey

2 MR. CURTIS JOHNSON: He
3 understands it now. He learned it at
4 some point. I wanted to find out when
5 he learned that particular fact.

6 MR. FRANK: Also objection to the
7 form of the question; served a summons
8 from whom.

9 MR. CURTIS JOHNSON: We haven't
10 gotten there yet. That's not the point.
11 He understands at this point he was
12 served with a summons, right? Okay.

13 MR. FRANK: He also testified --
14 he testified he was served with a
15 summons for divorce, so from whom is
16 relevant to the question.

17 Q. Do you understand that, sitting
18 here today, that you were served with a
19 summons by Midland Funding who was represented
20 by Forster & Garbus?

21 A. No, I didn't realize it was a
22 summons.

23 Q. You didn't realize it was a
24 summons?

25 A. I did not realize it was a

1 Thomas Sharkey

2 summons.

3 Q. Did there come a time when you
4 learned it was a summons?

5 MR. FRANK: Again, objection as
6 to what "it" is.

7 Q. There was something you were
8 served with; is that right?

9 A. I --

10 MR. FRANK: Objection.

11 Something he was served with,
12 when?

13 Q. You can answer my question.

14 MR. FRANK: If you understand his
15 question, you can answer.

16 A. Repeat the question.

17 (Record read.)

18 A. I was not served personally. I
19 received a piece of paper from someone who
20 lived in the same house as me. I did not
21 realize that it was a summons.

22 Q. Okay.

23 So this piece of paper you
24 received from someone living in the same house
25 as you that you didn't realize was a summons,

1 Thomas Sharkey

2 do you now realize it was a summons?

3 A. I was told -- I was told it was a
4 summons way after the fact. I didn't realize
5 it.

6 Q. When is way after the fact?

7 A. After the fact when -- after the
8 fact that I needed to start making payments
9 and there was a judgment against me. I didn't
10 even realize I had a summons to go to court.

11 Q. Okay.

12 Who told you you had a summons to
13 go to court?

14 A. I found out once I got the
15 judgment against me. I didn't even realize I
16 had a summons to go to court.

17 Q. Okay.

18 You said that you were handed a
19 piece of paper that you now understand to be a
20 summons by someone that lived with you; who
21 was that person?

22 A. That person was my cousin's
23 husband.

24 Q. What was his name?

25 A. Michael McGuigan,

1 Thomas Sharkey

2 M-C-G-U-I-G-A-N.

3 Q. When were you handed that piece
4 of paper by Mr. McGuigan?

5 A. That was probably the summer of
6 2012.

7 Q. Do you know how Mr. McGuigan got
8 that piece of paper?

9 A. He -- as far as I know, he was
10 sitting in the garage, outside the garage, the
11 garage door was open. I was at work, and
12 somebody just said -- asked if I lived there
13 and he said yes. And they said give this to
14 him and he handed it to me.

15 Q. Did he give it -- I will back up.
16 Do you know how long after he
17 received it that he gave it to you?

18 A. I don't know.

19 Q. Do you think it was a matter of
20 hours?

21 A. No.

22 Q. Days?

23 A. I have no idea. I don't
24 remember.

25 Q. Okay.

1 Thomas Sharkey

2 Lorraine?

3 A. Yes.

4 Q. When did Mr. McGuigan pass?

5 A. He passed on November 24th.

6 Q. Of this past year?

7 A. Um-hum.

8 Q. So at some point you were handed
9 a piece of paper by Mr. McGuigan who said that
10 someone gave it to him personally; is that
11 right?

12 A. Correct.

13 Q. You now understand that piece of
14 paper was a summons?

15 A. I did not know that at the time.

16 Q. Okay.

17 Did you read the piece of paper
18 that he handed you?

19 A. I looked at it briefly and all I
20 saw on the bottom of it was, and this is what
21 I remember about this piece of paper is it
22 said this is an attempt to collect a debt, so
23 I thought it was a bill. Like, you know, a
24 debt collector's bill, and I thought it was
25 garbage and I threw it out.

1 Thomas Sharkey

2 don't know. I'm not sure.

3 Q. Okay.

4 You mentioned that at some point
5 you learned that there was a judgment against
6 you; is that right?

7 A. Yes.

8 Q. How did you learn there was a
9 judgment against you?

10 A. I believe that somebody from
11 Forster & Garbus called me and told me that
12 there is a judgment against me.

13 Q. What was your understanding of
14 how they obtained that judgment against you?

15 A. They sent it to me that I failed
16 to appear in court and I said to him, I said,
17 I never received anything that told me to go
18 to some court at some date and some time, I
19 never received anything like that, ever.

20 And he says no. I said no, I
21 wasn't. I was never given a piece of paper
22 saying Mr. Sharkey, you must appear at this
23 court on this day, at this time, ever, and
24 then without me knowing that I could represent
25 myself at a time and a date at a court, a

1 Thomas Sharkey

2 you learned that Forster & Garbus had a
3 judgment against you?

4 A. No.

5 Q. Why not?

6 A. I just figured that they had it,
7 they had it, and I had to pay it, and I had to
8 pay it. And that was that.

9 Q. Did you contact any court when
10 you learned that Forster & Garbus had a
11 judgment against you?

12 A. No.

13 Q. Why not?

14 A. I just saw that they had the
15 judgment at that point and figured -- they
16 said they were going to contact my employer
17 and I didn't want them to contact my employer,
18 so I just went ahead and paid the money.

19 Q. Do you remember when Forster &
20 Garbus told you they had a judgment against
21 you?

22 A. I don't know exactly. I know it
23 was at the end of the summer and I think that
24 was the end of the summer of 2012, I believe.

25 MR. CURTIS JOHNSON: I am going

1 Thomas Sharkey
2 to get into exhibits now. Do you want
3 to take a break before we get into
4 exhibits?

5 MR. FRANK: Are you okay?

6 THE WITNESS: I am fine.

7 MR. CURTIS JOHNSON: Okay, we can
8 keep going.

9 Q. If you look back at what's been
10 marked as Exhibit Sharkey 1 sitting in front
11 of you?

12 A. Yes.

13 Q. It has withdrawn --

14 MR. CURTIS JOHNSON: This is 2.

15 (Sharkey Exhibit 2, Document
16 bearing Bates stamp Agoado-F&G-000191
17 through 000192, marked for
18 identification.)

19 Q. I am showing you what's been
20 marked as Exhibit Sharkey 2. It's a document
21 bearing Bates number Agoado-F&G-000191 through
22 192.

23 When I say Bates number, it's
24 that number at the bottom right-hand corner of
25 the page.

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Thomas Sharkey

I will tell you those numbers have been added in connection with this litigation to keep control of what documents we are talking about, it's a control number.

A. Yes.

Q. Do you recognize this document?

A. (Witness reviewing.)

Do I remember it or do I recognize it?

Q. Do you recognize it?

A. Yeah, I can recognize that it's a charge statement.

Q. Who's it a charge statement from?

A. This is from Bank of America.

Q. And whose account is this for?

A. It says prepared for Thomas J. Sharkey.

Q. Do you see an account number on the top left corner of the page?

A. I do.

Q. Do you recognize that account number?

A. No.

Q. Do you remember what your Bank of

1 Thomas Sharkey

2 America credit card account number was?

3 A. No.

4 Q. Do you see on the top of the page
5 says April 2009 statement?

6 A. Yes.

7 Q. Did you think this is possibly
8 the April 2009 statement from Bank of America
9 to you in connection with the Bank of America
10 credit card that you had?

11 A. That's what it says on this
12 statement. I don't know the validity of it or
13 not. I don't see anything itemized. I don't
14 know what the charges are. I see you have a
15 statement in front of me for \$6,000.

16 Q. It says credit line \$6,000?

17 A. I see credit line \$6,000, yes.

18 Q. What does it say the balance due
19 is?

20 A. New balance total? Is that what
21 you are asking me?

22 Q. I am asking you what -- if you
23 look at this whole document, what amount does
24 this document say the balance due is?

25 A. 6959.54.

1 Thomas Sharkey

2 Q. \$6,959.54?

3 A. Correct.

4 Q. What is the minimum payment due?

5 A. 2,053.

6 Q. If you look at the bottom of the
7 page, who's this document addressed to?

8 A. Tom Sharkey.

9 Q. What is the address?

10 A. 28 Criss Street, Ronkonkoma,
11 New York.

12 Q. Is that the address you were
13 living at in April of 2009?

14 A. Lake Ronkonkoma, yes.

15 Q. Do you have any reason to believe
16 you didn't receive this statement from Bank of
17 America?

18 MR. FRANK: Objection to the form
19 of the question.

20 Q. You can answer.

21 MR. FRANK: Presumes the
22 statement was sent from Bank of America
23 to the witness.

24 A. I presume it was. I don't
25 remember. I don't know.

1 Thomas Sharkey

2 Did I read that right?

3 A. You read it right.

4 Q. Okay.

5 Do you remember receiving any
6 statements from Bank of America with language
7 similar to that?

8 A. No.

9 Q. Do you have any reason to believe
10 you didn't receive statements from Bank of
11 America?

12 A. I really don't remember. I
13 really don't.

14 Q. Okay.

15 You testified earlier that there
16 came a time when you stopped making payments
17 on your Bank of America card, right?

18 A. I believe so, yeah.

19 Q. Do you remember looking at this
20 document? Does that refresh your recollection
21 as to when you may have stopped making
22 payments?

23 A. This was further the time when I
24 was going to go into foreclosure on my home
25 and was forced to sell my house in a short

1 Thomas Sharkey

2 sale.

3 Q. So sometime around April 2009 you
4 weren't making payments on your Bank of
5 America credit card, right?

6 A. As far as I can remember.

7 Q. Okay.

8 A. But I did offer to make \$50 a
9 month payments, I do remember that.

10 Q. Okay.

11 So in April 2009, it was your
12 understanding that you had an obligation to
13 pay back Bank of America, right?

14 A. I didn't know the exact amount.
15 I don't know if this was the exact amount. I
16 really wasn't scrutinizing all my credit card
17 bills at that point as I was going through so
18 many other things. I mean there could have
19 been purchases put onto this card not to my
20 knowledge. Not saying that it was or it
21 wasn't, but I am saying, to my recollection,
22 for what I was going through, I did not look
23 through the statements to see if this was the
24 correct amount.

25 Q. Okay.

1 Thomas Sharkey

2 honestly don't.

3 Q. Okay.

4 If you look at the second page of
5 this statement?

6 A. (Witness complying.)

7 Q. Look at the top of the page, the
8 second box down says customer statement of
9 disputed item; you see that?

10 A. Yes.

11 Q. Read what's in that box real
12 quick to yourself.

13 A. (Witness reviewing.)

14 Q. And then read everything from
15 there down to where it says grace period.

16 A. (Witness complying.)

17 Q. Let me know when you've looked at
18 it.

19 A. I did.

20 Q. What is your understanding of
21 that section of this document?

22 A. My understanding is if you have a
23 dispute, you should get in contact with them
24 and let them know if you have a dispute.

25 Q. Did you ever get in contact with

1 Thomas Sharkey
2 Bank of America to dispute any amount?

3 A. I did not.

4 Q. Okay.

5 Put that one aside.

6 MR. FRANK: Off the record a
7 second?

8 MR. CURTIS JOHNSON: Sure.

9 (Discussion held off the record.)

10 (Sharkey Exhibit 3, Document
11 bearing Bates stamp Agoado-F&G-000193
12 through 000194, marked for
13 identification.)

14 BY MR. CURTIS JOHNSON:

15 Q. Showing you what's been marked as
16 Exhibit Sharkey 3, bearing Bates stamp
17 Agoado-F&G-000193 to 194; do you recognize
18 this document?

19 A. Strange.

20 I really -- when is the date on
21 this? May of 2009? Payments and credits
22 6959 -- I don't remember this.

23 Q. Okay.

24 You don't remember receiving
25 this?

1 Thomas Sharkey

2 if I really needed to appear, they would send
3 me an additional document telling me when to
4 appear and I never received one.

5 Q. Look at the statement I just read
6 to you, the fifth line down, it says, "By
7 serving an answer to the annexed complaint
8 upon plaintiff's attorney at the address
9 stated below"; do you see that?

10 A. Um-hum.

11 Q. What is your understanding of by
12 serving an answer to the annexed complaint
13 upon the plaintiff's attorney?

14 A. I don't know how they wanted me
15 to answer. Like I said, I thought they would
16 send me a piece of paper saying appear at this
17 time and date, and I never received anything.

18 Q. You see the next paragraph, down
19 where it says, "Upon your failure to answer,
20 judgment will be taken against you for the
21 relief demanded in the complaint, together
22 with disbursements of this action."

23 A. Um-hum.

24 Q. What is your understanding of
25 that paragraph?

1 Thomas Sharkey

2 A. I thought that it was just a way
3 to get them for me to speak with them
4 voluntarily because it does not give me a time
5 or a date to appear.

6 Q. Okay.

7 You see right below that where it
8 says, "Forster & Garbus, LLP, attorneys for
9 plaintiff"?

10 A. I do.

11 Q. It has an address and phone
12 number?

13 A. I do.

14 Q. Then your understanding was this
15 document was asking you to contact Forster &
16 Garbus, right?

17 A. Yes.

18 Q. Did you, in fact, contact
19 Forster & Garbus upon receipt of the document?

20 A. I did not.

21 Q. You see where it says original
22 creditor, Bank of America or "ORIG CRED: Bank
23 of America"?

24 A. Yes.

25 Q. You testified earlier that you

1 Thomas Sharkey

2 in a million years.

3 Q. Below that line, it says, "Note,
4 the law provides that:"

5 Then there are three different --
6 there is an A, B and C, three options, right?

7 A. Um-hum.

8 Q. It says, "If this summons is
9 served by its delivery to you, or (for a
10 corporation) an agent authorized to receive
11 service, personally within the County of
12 Suffolk, you must answer within 20 days after
13 such service, or (B) if this summons is served
14 otherwise than as designated in Subdivision
15 (A) above, you are allowed 30 days to answer
16 after the proof of service is filed with the
17 clerk of this court."

18 Do you see that?

19 A. I see -- I see it.

20 Q. What is your understanding of A
21 and B together?

22 MR. FRANK: Objection to the form
23 of the question.

24 What is the question?

25 MR. CURTIS JOHNSON: What is his

1 Thomas Sharkey

2 understanding of this language right
3 here?

4 A. I was never issued a summons by a
5 process server.

6 Q. Okay.

7 A. It's hearsay to say if I even
8 received anything, but I don't know when he
9 received it and when he gave it to me, this
10 letter, but your question is what?

11 Q. What is your understanding of the
12 language in A and B on this document?

13 MR. FRANK: You are asking --

14 MR. CURTIS JOHNSON: What is his
15 understanding of those words?

16 A. It says that you must answer
17 within 20 days after such service, but I don't
18 even know if the service in which this was
19 served was done correctly or legally. I don't
20 have any kind of dates. I did not see any
21 process server personally.

22 To me, this was a bogus way for
23 someone to try to strong-arm me and collect a
24 debt and make me think this was a legal
25 document, which some bill collectors do this.

1 Thomas Sharkey

2 They send you something in the
3 mail that looks like it's a legal document and
4 it looks like you are being summoned to court
5 and they don't put a time or date and that's
6 the way they get you to come and collect your
7 debt. And to me this seemed like a bogus way
8 of going about getting it, rather than say
9 Thomas Sharkey, appear at this court on this
10 time and date. So to me this was bogus.

11 Q. When you received this document,
12 did you show it to anybody?

13 A. I showed it to Michael McGuigan.

14 Q. Did you talk to Michael McGuigan
15 about it?

16 A. Yeah. He said this is bogus, get
17 rid of it.

18 Q. What did Michael McGuigan do for
19 a living?

20 A. He worked for Long Island Rail
21 Road.

22 Q. What did he do for Long Island
23 Rail Road?

24 A. I'm not sure exactly what he did.

25 Q. Was he an attorney?

1 Thomas Sharkey

2 of the question.

3 That isn't what it says. It says
4 a credit card or line of credit or
5 promissory note/loan.

6 MR. CURTIS JOHNSON: Okay.

7 MR. FRANK: Those are
8 disjunctives.

9 Q. Let's look at what it actually
10 says. It says, "On information and belief,
11 defendant, in person or through an agent, made
12 credit card purchases or took money advances
13 under a credit card or line of credit account
14 or promissory note/loan, which a copy was
15 furnished to defendant."

16 Do you see that?

17 A. Yes, I do.

18 Q. Did you, in fact, make purchases
19 on a Bank of America card?

20 A. I'm sure I made some purchases on
21 a Bank of America card. I didn't receive any
22 kind of promissory note or loans.

23 Q. But you received one of the
24 three, one of those, right; you had a credit
25 card and you made purchases, right?

1 Thomas Sharkey

2 Q. Okay.

3 How old was Mike McGuigan in --

4 A. When he passed?

5 Q. No, in 2012.

6 A. He was -- I believe he was 61.

7 Q. So he wasn't a minor, right?

8 A. He was not a minor.

9 Q. In 2012, was Mr. McGuigan at all
10 mentally impaired?

11 A. He had some issues.

12 Q. What were his issues?

13 A. He had personal issues, which I
14 will not go into.

15 Q. Do you contest that he was a
16 person of suitable age and discretion?

17 A. I would.

18 Q. On what basis?

19 A. I am not going to get into his
20 personal life. Let him rest in peace.

21 Q. Why do you think he is not a
22 person of suitable age and discretion?

23 A. I said I would rather not discuss
24 his personal problems. Let him rest in peace.

25 Q. Off the record a second.

1 Thomas Sharkey

2 (Discussion held off the record.)

3 MR. FRANK: Okay. The witness is
4 acknowledging that they -- he received a
5 piece of paper that was a summons. I
6 think he already answered that question
7 yes, if I remember.

8 MR. CURTIS JOHNSON: I want to
9 confirm that he doesn't contest that he
10 was served with the summons and
11 complaint that I showed him today, which
12 I don't think he has answered.

13 MR. FRANK: That's fine.

14 THE WITNESS: Fine.

15 A. Fine.

16 Q. Do you admit that you were served
17 with the summons and complaint that is Sharkey
18 Exhibit 4?

19 A. Yes.

20 Q. Do you admit that you were served
21 on or around February 25, 2012?

22 A. Around there.

23 Q. Okay.

24 (Sharkey Exhibit 6, Document
25 bearing Bates stamped Agoado-F&G-000098

1 Thomas Sharkey
2 information that did not come from any
3 discussion with an attorney, then you
4 may answer using that understanding.

5 A. So repeat the question.

6 I'm sorry.

7 Q. Sure.

8 Having read through paragraph

9 1 --

10 A. Right.

11 Q. -- other than things that you
12 were told by your attorney about paragraph 1,
13 do you have any reason to doubt the veracity
14 of the statements in paragraph 1?

15 MR. FRANK: Objection as to time.

16 Does he have any reason right
17 now?

18 MR. CURTIS JOHNSON: Right now.

19 A. I have no opinion either way,
20 because I have never seen this document
21 before, to my knowledge, so I -- it can't say
22 anything. I can't agree with it or disagree
23 with it. I don't have an opinion, really.

24 Q. Okay.

25 Paragraph 2, just take a quick

1 Thomas Sharkey

2 look through that.

3 A. (Witness reviewing.)

4 Okay.

5 Q. What is your understanding of
6 what's been stated in paragraph 2?

7 A. So Midland Funding would like to
8 make some money off an account that they
9 bought, a bad account that they bought off of
10 Bank of America. That's how they make their
11 money. So the plaintiff is saying that she
12 had access, review the electronic records and
13 she is authorized to make this affidavit,
14 which they need for Bank of America on the
15 plaintiff's behalf.

16 Q. Okay.

17 Other than what you have been
18 told by your attorney in connection --

19 A. They didn't tell me this. This
20 is what I am saying.

21 Q. I am asking a very specific
22 question so he doesn't have to object.

23 Other than what you have been
24 told by your attorney in connection with this
25 case, do you have any independent basis to

1 Thomas Sharkey
2 doubt the veracity of the statements in
3 paragraph 2?

4 A. I think this is what they need to
5 do in order to do the kind of business that
6 they do to buy off bad debts and to make money
7 off of it. This is the legal steps that they
8 need to take in order to collect their monies.
9 This is what they need to do legally.

10 Q. Okay.

11 Do you have any reason to doubt
12 that they actually did what they needed to do?

13 A. Sure, I have no proof that they
14 did or didn't.

15 Q. Other than this sworn statement
16 right here stating the facts, right?

17 A. You know what, it doesn't mean
18 anything to me.

19 Q. Okay.

20 Now go down to paragraph 3.

21 A. Um-hum.

22 Q. Again, just read through it
23 really quickly.

24 A. Um-hum.

25 (Witness reviewing.)

1 Thomas Sharkey

2 Q. What is paragraph 3 talking
3 about?

4 A. It's talking about what the
5 defendant owed at the approximate time when
6 they bought the bad account.

7 Q. I think you are looking at
8 paragraph 4, right?

9 A. I'm sorry.

10 MR. FRANK: Flip back.

11 This is paragraph 3 (indicating).

12 THE WITNESS: Okay.

13 A. (Witness reviewing.)

14 So she's familiar -- she's
15 trained, the records are kept in the regular
16 course of business, of course is what she
17 needs to say. It was in the regular course of
18 business for a person with knowledge of the
19 act or event recorded to make the record or
20 data compilation with a person of knowledge to
21 transmit information there to be included in
22 such records. In the regular course of
23 business, the record or compilation is made at
24 or near the time of the act or event, the
25 relevant financial information concerning the

1 Thomas Sharkey
2 accounts includes the following.

3 Q. Okay.

4 Now --

5 A. So --

6 Q. Looking at paragraph 3, other
7 than maybe what you have been told by your
8 attorneys in connection with this case, do you
9 have any independent reason to doubt the truth
10 of the statements in paragraph 3?

11 A. (Witness shaking head.)

12 Q. I saw you shake your head, but
13 the reporter can't write that down.

14 A. (Witness reviewing.)

15 I don't doubt or believe. I mean
16 it's a written paragraph in a legal document
17 that needs to be written this way, I
18 understand.

19 Q. Okay.

20 But you don't have any reason to
21 think it's not true?

22 A. It can be true, it cannot be
23 true. It's something -- it's -- there are
24 steps of protocol that need to be taken in
25 order to -- for this process to be taken. I

1 Thomas Sharkey
2 am an intelligent man. I understand what this
3 is all about.

4 Q. Okay.

5 But I guess what I am trying to
6 get at is, do you have any, other than what
7 you have been told by your attorneys, do you
8 have any personal reason to think the
9 statements made in paragraph 3 aren't true?

10 A. I don't know if they are true or
11 false. I don't know this person. This is the
12 first time I am reading this. Either way, if
13 it's true or false, I have no clue if it's
14 true or false.

15 Q. Okay.

16 Paragraph 4?

17 A. (Witness reviewing.)

18 Q. "The account shows the defendant
19 owed a balance of \$6,959.54 as of May 29,
20 2011."

21 Do you see that?

22 A. I do.

23 Q. What is your understanding of
24 paragraph 4?

25 A. That's what they are saying that

1 Thomas Sharkey

2 I owe.

3 Q. Okay.

4 A. I don't have any kind of
5 documentation saying, and this is over four
6 years ago. I don't know how they arrived at
7 that number. And I understand that that is
8 what they believe I owed at that point.

9 Q. But did you have any reason to
10 think you didn't owe that amount?

11 A. Yeah, I could have, I could not
12 have. I don't know.

13 Q. Okay.

14 Paragraph 5, again, take a quick
15 look at it.

16 A. (Witness reviewing.)

17 Q. What is your understanding of
18 paragraph 5?

19 A. That I failed to make some of the
20 payments pursuant to the agreement of the
21 credit card.

22 Q. And was that true?

23 A. At times, yes.

24 Q. Paragraph 6.

25 A. (Witness reviewing.)

1 Thomas Sharkey

2 Q. Take a quick look.

3 A. (Witness reviewing.)

4 Q. It's saying "(1) opened the
5 account almost ten years ago and the last
6 payment posted to the account was close to six
7 years ago, and it was charged off about six
8 years ago."

9 Did you have any reason to doubt
10 the truth of the statements in paragraph 6,
11 other than what you've been told by your
12 attorneys?

13 A. I don't remember. I can't tell
14 you exactly if -- this is what it says. This
15 is what it says. It was a long time ago.

16 Q. Okay.

17 Paragraph 7, take a quick look at
18 that one.

19 A. (Witness reviewing.)

20 Q. What is paragraph 7 saying?

21 A. Saying that they retained
22 attorneys to collect the delinquent debt.

23 Q. Is it also saying you failed to
24 make full payment on the debt?

25 A. Yes.

1 Thomas Sharkey

2 Q. And that demand was made on you
3 for the debt?

4 A. Yes.

5 Q. Do you have any reason to doubt
6 the allegation in paragraph 7?

7 A. Just say the question again,
8 please.

9 Q. Do you have any reason to doubt
10 the allegations that are found in paragraph 7?

11 MR. FRANK: Objection to the form
12 of the question.

13 Q. Other than what you have been
14 told by your attorneys?

15 A. Like I said, I am reading this
16 for the first time, so I really don't have an
17 opinion either way on it.

18 Q. Okay.

19 Do you have any reason to think
20 that Midland or its agents, Forster & Garbus,
21 didn't make demand on you for a balance in
22 connection with your Bank of America credit
23 card?

24 MR. FRANK: Objection,
25 privileged.

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Thomas Sharkey

MR. CURTIS JOHNSON: I think he's already testified that he received letters asking him to pay his Bank of America credit card. I am just asking him to confirm the context in -- in the context of this document that that's his recollection.

I don't think that's privileged.

MR. FRANK: If you are able to testify, you can answer the question, without reflecting attorney/client communications, please do.

A. I am really sorry. Just repeat the question, because I am confused right now.

Q. Sure, I will clarify it.

You testified earlier that you remember receiving at least one letter from Midland asking you to pay a debt on your Bank of America credit card, right?

A. I remember one, yes.

Q. And do you have any reason to doubt that that letter -- you received that letter more than 30 days before this affidavit was executed?

1 Thomas Sharkey

2 A. I don't remember this affidavit
3 at all.

4 Q. Okay.

5 But if you look at the date of
6 the affidavit, it's on the third page, May 15,
7 2012; do you see that?

8 A. Um-hum.

9 Q. Do you have any reason to doubt
10 that at least 30 days before May 15, 2012, you
11 received a letter from Midland Funding asking
12 you to pay your obligation on your Bank of
13 America credit card?

14 A. I don't remember that. I
15 received a letter from them a long time ago,
16 not anywhere in --

17 Q. Was it at least 30 days before
18 May 15, 2012 that you received the letter?

19 A. From Midland Funding, it was way
20 before that.

21 Q. Okay.

22 A. Way, way. I hadn't heard from
23 them for ages until I heard from Forster &
24 Garbus.

25 Q. Okay.

1 Thomas Sharkey

2 And we've already talked about
3 this, but when you were asked to pay Midland
4 Funding you didn't pay Midland Funding, right,
5 immediately?

6 A. No, I didn't.

7 Q. Upon being asked -- okay.

8 Look at paragraph 8.

9 A. (Witness reviewing.)

10 Yeah, this is executed for the
11 purpose of enabling the plaintiff to obtain a
12 default judgment against the defendant herein
13 or for the Defendant's failure to answer or
14 otherwise defend. As I said before, I didn't
15 realize there was a time or date for me to go
16 and defend myself.

17 Q. Okay.

18 You didn't consult an attorney to
19 find out if there was a time or date?

20 A. No, I did not. There was no time
21 or date.

22 Q. And paragraph 9.

23 A. (Witness reviewing.)

24 Q. Take a quick look at that.

25 A. I do not recall receiving any

1 Thomas Sharkey

2 Q. Do you remember receiving any
3 correspondence from Forster & Garbus?

4 A. I do.

5 Q. Okay.

6 A. Vaguely.

7 Q. Do you remember receiving
8 correspondence informing you that a judgment
9 had been entered against you?

10 A. I think I do, yes.

11 Q. Okay.

12 You just don't remember if this
13 is the exact correspondence?

14 A. I don't remember if this was the
15 piece of correspondence or not, but I do
16 remember, it was, yeah, a judgment was
17 rendered against me, which I was taken aback
18 with, because I really didn't know that there
19 was really even a court date and I didn't know
20 whether they got their decision made and a
21 court date, because I was never given a court
22 date.

23 Q. What did you do when you received
24 the letter from Forster & Garbus saying a
25 judgment had been entered against you?

1 Thomas Sharkey

2 it.

3 Q. Okay.

4 Are you seeking to recover from
5 Forster & Garbus for the way you feel you were
6 treated by Forster & Garbus?

7 MR. FRANK: Objection,
8 privileged.

9 If you are able to speak about
10 the nature of your recovery and theory
11 of the case without divulging
12 attorney/client communication about the
13 strategy of the case, then please do.

14 But anything about the intentions
15 of the lawsuit that is a function of
16 attorney/client communications is
17 privileged.

18 A. Yeah, I would rather not discuss
19 that.

20 Q. Okay.

21 Other than what you've been told
22 by your attorneys, why are you suing Forster &
23 Garbus?

24 A. Why am I suing Forster & Garbus,
25 because I don't think that they went about

1 Thomas Sharkey
2 collecting this debt properly. I think it was
3 very -- done very unprofessionally.

4 I don't think it was done in a
5 clear-cut manner that an average individual
6 would realize that they need to show up in
7 court when they get a piece of paper in the
8 mail with no date and no time. I think they
9 used tactics to scare people. I just think
10 the whole thing was unprofessional. I think
11 it was handled totally incorrectly and that's
12 why I'm here.

13 Q. Okay.

14 Why are you suing Midland
15 Funding?

16 MR. FRANK: Objection.

17 Q. Other than what you may have been
18 told by your attorneys?

19 MR. FRANK: Well, that doesn't
20 solve the problems.

21 Any communications at all that
22 lead to your belief as to why you are
23 suing Midland Funding, at this time if
24 that belief is formulated as a result of
25 your attorney/client communications,

1 Thomas Sharkey

2 then it's privileged.

3 A. Yeah, it is. No, it's going to
4 be privileged.

5 Q. Okay.

6 Other than communications you
7 have had with your attorney, you have no
8 independent reason for suing Midland Funding,
9 right?

10 A. Right.

11 (Sharkey Exhibit 8, Document
12 bearing Bates stamp Agoado-F&G-000109,
13 marked for identification.)

14 Q. Showing you what's been marked as
15 Exhibit Sharkey 8 (handing).

16 A. (Witness reviewing.)

17 Q. It has Bates stamp
18 Agoado-F&G-000109. Appears to be a letter
19 from Forster & Garbus to you at 606 Birch
20 Hollow Drive, dated June 13, 2012.

21 Do you recognize this document?

22 A. Let me read it.

23 (Witness reviewing.)

24 This was a letter that was done
25 after the judgment was already made, correct?

1 Thomas Sharkey

2 I'm not sure.

3 MR. FRANK: Let him ask the
4 questions.

5 A. I don't understand.

6 Q. Okay.

7 My question, first question I
8 asked you is do you recognize this document?

9 A. Possibly. I don't 100 percent
10 remember it.

11 Q. Do you have any reason to believe
12 you didn't receive this document?

13 A. I'm sorry?

14 Q. Do you have any reason to believe
15 you did not receive this document?

16 MR. FRANK: Objection to the form
17 of the question.

18 A. I don't know.

19 Q. The address on the document is
20 your address, right?

21 A. That's correct.

22 Q. It was your address in 2012?

23 A. Yes.

24 Q. And you have never had trouble
25 getting mail at that address, right?

1 Thomas Sharkey

2 A. No.

3 Q. So if this document was mailed to
4 you, you would have received it?

5 A. I believe I probably would have.
6 I don't know. I can't --

7 Q. All right. Take a look at
8 everything after Dear Mr. Sharkey.

9 A. Okay.

10 Q. That couple of paragraphs that
11 follow that, what is your understanding of
12 what this letter is telling you?

13 A. (Witness reviewing.)

14 First of all, they are looking
15 for assets to satisfy the judgment. They
16 might send it to the sheriff's department.
17 And I can contact the office to arrange to pay
18 said judgment, and that's when I believe I
19 spoke to -- I may have received this letter,
20 because I think that may have been when I
21 talked to Mr. Rizzo and that's when he told me
22 that if I came up with a large amount of money
23 within 30 days, he could do a little bit
24 better or something like that and I don't care
25 who you have to get it from, get it from your

1 Thomas Sharkey
2 brother, your brother-in-law, anyone in your
3 family. I think it was after this letter, I
4 believe is when that happened. I am not sure.

5 Q. Okay.

6 Again, you didn't consult an
7 attorney around the time you received this
8 letter about this letter, right?

9 A. No.

10 Q. Did you talk to anyone else about
11 the letter at the time you received it?

12 A. I might have spoke to my cousin's
13 husband about it. I don't remember.

14 Q. Your cousin's husband is Joe
15 Cobis?

16 A. No, Michael McGuigan who's
17 passed.

18 Q. Oh, okay.

19 You don't remember talking to
20 Mr. McGuigan, or do you, about this letter?

21 A. I really -- I honestly -- I don't
22 remember. I'm sure I mentioned it to him.

23 Q. Do you remember talking to
24 Mr. McGuigan about there being a judgment
25 against you in general?

1 Thomas Sharkey

2 Q. Did you ever tell the sheriff's
3 office I don't think I owe this debt?

4 A. No.

5 Q. Did you ever tell Forster &
6 Garbus I don't think I owe this debt?

7 A. No, I thought that was it, I had
8 to pay it.

9 Q. Okay.

10 So Forster & Garbus never
11 actually ended up garnishing your wages,
12 right?

13 A. If I didn't voluntarily pay the
14 sheriff's department \$500 a month, then they
15 were going to go to my employer, which would
16 have been a huge embarrassment to me. So I'm
17 sure at one point I must have contacted the
18 sheriff's department and said I will pay
19 voluntarily the \$500 a month until I pay it
20 off. And I know the -- at the end I paid a
21 big lump sum and received a letter back from
22 the sheriff's department saying this is paid
23 in full.

24 Q. Okay.

25 (Sharkey Exhibit 10, Document

1 Thomas Sharkey

2 document right now.

3 You are currently suing Midland
4 Funding and Forster & Garbus, right?

5 A. Yes.

6 Q. You are represented by Frank &
7 Bianco, right?

8 A. Yes.

9 Q. Do you know how many complaints
10 have been filed in this case?

11 A. I'm sorry?

12 Q. Do you know how many complaints
13 have been filed in this particular case?

14 A. No.

15 Q. Do you know how many complaints
16 you have been a party to in this case?

17 A. No.

18 Q. Was this litigation pending when
19 you joined as a party?

20 A. I don't know.

21 Q. How did you learn of the
22 existence of litigation against Forster &
23 Garbus and Midland Funding?

24 A. Through Mr. Finkel.

25 Q. How did you come to join this

1 Thomas Sharkey

2 Before receiving a letter from
3 Mr. Finkel, did you have any intention to sue
4 Forster & Garbus or Midland Funding?

5 A. I wish I could. You know, I
6 had -- I hadn't actually decided to do that.

7 Q. Do you understand that there's
8 more than one law firm representing the
9 plaintiffs in this case?

10 A. I don't know.

11 Q. Okay.

12 The attorney sitting directly to
13 your right, do you know what his name is?

14 A. Um-hum.

15 Q. What is his name?

16 A. Greg.

17 Q. Okay.

18 And do you know if Greg, whose
19 last name is Frank, do you know if Mr. Frank
20 works with Mr. Finkel at the same law firm?

21 A. I don't believe so. I don't
22 know.

23 Q. So you know there's at least two
24 law firms representing the plaintiffs in this
25 case, right?

1 Thomas Sharkey
2 as whether or not someone served you
3 with a complaint for the Bank of America
4 suit, which is the language of the
5 interrogatory.

6 MR. CURTIS JOHNSON: Off the
7 record a second.

8 (Discussion held off the record.)

9 BY MR. CURTIS JOHNSON:

10 Q. If you look at Interrogatory
11 Number 10, it says, "Describe all actions you
12 took in response to being served with a
13 complaint for the Bank of America suit."

14 And your response to
15 Interrogatory 10 says, "Plaintiff incorporates
16 by reference his response made with respect to
17 Interrogatory Number 9 above. Plaintiff
18 objects to this interrogatory to the extent
19 it assumes that plaintiff admits that he was
20 served with the complaint for the Bank of
21 America suit."

22 With those objections in mind, it
23 also says, "Subject to and without waiving his
24 general and specific objections, plaintiff
25 states as follows: Plaintiff took no action,

1 Thomas Sharkey
2 as plaintiff was not aware as to what to do in
3 response to the filing of the Bank of America
4 suit."

5 Now, recognizing the fact that
6 you don't admit you were served, your response
7 seems to indicate that you were served, right?

8 MR. FRANK: I am going to object
9 to that form.

10 It specifically says plaintiff
11 objects to this interrogatory to the
12 extent it assumes that plaintiff admits
13 that he was served with the complaint
14 for the Bank of America suit.

15 A. That's correct.

16 MR. FRANK: You are asking if
17 that sentence means that he does assume
18 it? I don't understand the objection.

19 A. It's assuming that I admitted
20 that I was served with the complaint and I
21 never admitted that.

22 Q. Okay.

23 Except for today you did.

24 A. I didn't know what it was. I am
25 telling you as of today.

1 Thomas Sharkey

2 Q. Okay.

3 A. I didn't take any action, because
4 I was not aware of what to do in response of
5 that, and that's exactly what I said.

6 Q. Right, but you clearly, if that's
7 your response to this interrogatory, you
8 didn't take action because you didn't know
9 what to do in response; you had to know there
10 was something you needed to respond to, right?

11 A. I didn't know that I had to
12 respond to it.

13 MR. FRANK: Objection to the form
14 of the question.

15 A. I didn't know I had to respond to
16 it, because I didn't take it as a real
17 summons. I didn't think this was a real
18 summons. If you look back to the number
19 before that, I didn't know that this was a
20 real summons. People go all different
21 creative ways to try to collect money from
22 people. I thought this was maybe a really
23 shady and creative way of trying to get money
24 from somebody. I did not take this as an
25 actual summons. So thinking that, this does

1 Thomas Sharkey

2 make sense.

3 Q. You can put that aside.

4 Do you understand this case is
5 brought as a putative class action?

6 A. I'm not sure exactly what that
7 means.

8 Q. Okay.

9 Do you understand that this case
10 is brought with the hope that at some point it
11 will be certified as a class action by the
12 plaintiffs?

13 MR. FRANK: I am going to object
14 as to privilege.

15 Any conversations that you may
16 have had about the procedure components
17 of this lawsuit with counsel are
18 protected by a privilege.

19 If you, as a layperson, had an
20 independent understanding of the Federal
21 Court class action process, then please
22 answer using that understanding.

23 A. I don't have any understanding of
24 that whatsoever.

25 Q. Okay.

1 Thomas Sharkey

2 Do you have an understanding of
3 what a class action is?

4 A. Not really.

5 MR. FRANK: Objection again on
6 the basis of privilege. I sense we are
7 heading in the direction of, you know,
8 procedure, legal procedure. And so I am
9 going to blanket object to any legal
10 procedure questions that involve
11 counsel.

12 MR. CURTIS JOHNSON: Okay. I
13 will make a general blanket exception in
14 my questions.

15 Q. The questions I am going to ask
16 you for the foreseeable future about class
17 actions, I am not asking you to tell me what
18 your counsel told you. I am asking for your
19 independent understanding.

20 A. Okay.

21 MR. FRANK: Only if you have an
22 independent understanding.

23 A. Okay. I get it. I get it.

24 Q. Do you know what a class action
25 is?

1 Thomas Sharkey

2 MR. FRANK: Objection to the form
3 of the question; meant to be.

4 MR. CURTIS JOHNSON: I am trying
5 to get around the word putative, because
6 he doesn't understand what putative --
7 he certainly doesn't understand that,
8 but -- all right.

9 Q. Please look back at Exhibit 1.

10 A. Exhibit 1?

11 Q. Exhibit 1.

12 A. (Witness reviewing.)

13 Okay.

14 Q. You see on the top of Exhibit 1
15 on the right side where it says Second Amended
16 Class Action Complaint?

17 A. Yes.

18 Q. Do you understand what the term
19 class action means in connection with this
20 document?

21 A. I'm not sure. I don't mean to
22 sound ignorant.

23 Q. I understand.

24 A. I don't know.

25 Q. Please look at the caption where

1 Thomas Sharkey

2 Q. You don't have an understanding
3 what it means to be a named plaintiff?

4 A. No, I don't.

5 Q. Okay.

6 A. Like I said, I'm sorry, I don't
7 mean to sound ignorant, but this is not my
8 forte.

9 Q. No, it's fine.

10 Have you ever heard of the term
11 class representative, other than what you've
12 been told by counsel?

13 MR. FRANK: Object on the basis
14 of privilege.

15 The plaintiff has every right to
16 rely on counsel for any understanding of
17 legal terms such as class
18 representative. If the witness has an
19 independent lay understanding of the
20 term class representative before his
21 privileged communications with counsel,
22 please give that understanding.

23 A. Okay.

24 I'm really confused here. What
25 is the question now?

1 Thomas Sharkey

2 Q. Sure.

3 With your counsel's objection
4 that he just stated, I am going to have the
5 reporter read back the question.

6 (Record read.)

7 A. No, I have never heard it.

8 Q. Other than what you've been told
9 by counsel, do you have an understanding of
10 your responsibilities as a named plaintiff in
11 this case?

12 MR. FRANK: Object to the entire
13 line of questioning. I question -- the
14 witness is allowed to rely on counsel in
15 the prosecution of litigation, so I
16 question the relevance of the witness'
17 precounsel communication understanding
18 of these terms.

19 MR. CURTIS JOHNSON: Fine.

20 I also believe that class
21 representatives have to understand their
22 role as class representatives and if you
23 are going to object on privilege grounds
24 on every single question of his
25 understanding of his role, then I have

1 Thomas Sharkey

2 Q. Do you know what, other than what
3 you've been told by counsel, do you know what
4 laws or common law principles you allege
5 Forster & Garbus violated?

6 MR. FRANK: Again, object. This
7 is turning into a memory test about the
8 complaint. If you want to ask him
9 questions about the complaint, it's
10 sitting right in front of him. If you
11 want this to be a memory test, I don't
12 know what we will get out of it.

13 Q. You can answer my question.

14 A. The question is?

15 Q. Other than what you've been told
16 by your lawyers, do you know what common law
17 principles or statutes you allege that
18 Forster & Garbus violated?

19 A. I don't know.

20 Q. Okay.

21 You can look back at Exhibit 1.

22 A. (Witness complying.)

23 Q. It's a long document. So I am
24 going to give you a few minutes to read
25 through it.

1 Thomas Sharkey

2 I will represent that attached to
3 Exhibit 1 -- I'm sorry, attached to Exhibit 1
4 are two exhibits, A and B, and I am not going
5 to ask you any questions about Exhibit A and
6 B, but you can still look through, if you
7 like.

8 A. (Witness reviewing.)

9 Q. I am not going to ask you about
10 those exhibits.

11 A. Okay.

12 Q. Have you seen that document
13 before today?

14 A. Have I seen this document before
15 today, no.

16 Q. Did you assist in the preparation
17 of that complaint?

18 A. Of this document?

19 Q. Yes.

20 A. Did I assist in this document?

21 Q. Did you assist your attorney's in
22 the preparation of that document?

23 A. I mean I discussed what happened
24 to me with my attorney obviously, but I didn't
25 help them prepare this document.

1 Thomas Sharkey

2 Q. And they didn't ask you to review
3 it before they filed it, did they?

4 A. No.

5 Q. Did they go over the contents of
6 it with you before it was filed?

7 MR. FRANK: Object again. You
8 are firing out the questions so fast,
9 you are answering so fast, I can't get
10 in there.

11 Q. I'm not asking the content. I am
12 just asking if they took place.

13 MR. FRANK: I am trying to
14 remember which of the last three
15 questions were asked.

16 (Record read.)

17 MR. FRANK: Object as to form.

18 Temporally what that means, the
19 contents of the document?

20 Q. You can answer.

21 A. Did they go over -- this is the
22 first time I am reading it. Everything that
23 is listed in here I can see is being true and
24 I discussed a lot of the things that are in
25 this document with my attorneys.

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Thomas Sharkey

allegations in the complaint without
divulging privilege, attorney/client
communications, please do so.

A. Okay.

Repeat the question.

Q. Other than what you've been told
by your attorneys, what statements by
Forster & Garbus do you allege were deceptive?

A. I don't think there was any basis
for a lot of things that Forster & Garbus said
to me, because I don't think they have
anything to back it up and that's my personal
opinion.

Q. How did you arrive at the
personal opinion that Forster & Garbus didn't
have anything to back it up?

A. Because they never provided me
with anything except for the fact that Midland
Funding bought a debt which I didn't even know
what the exact amount was and they were coming
after me for it.

Q. But again, you never asked
Forster & Garbus to provide you anything, did
you?

1 Thomas Sharkey

2 MR. FRANK: Objection.

3 Asked and answered.

4 A. Repeat the question.

5 Did I ever ask Forster &
6 Garbus --

7 Q. To provide you any support for
8 their claim that you owed debt?

9 A. No, I didn't.

10 Q. Okay.
11 Other than what you've been told
12 by your attorneys, how did you believe you
13 have been damaged by Forster & Garbus'
14 actions?

15 A. I think I said that in my last
16 three answers before, but I will reiterate it
17 one more time.

18 Q. Okay.

19 A. I think it was very shady the way
20 that they served me because to me it did not
21 seem like they were serving me the proper way
22 that someone should be served with telling me
23 where and a time to appear and a date to
24 appear.

25 I think they would go any way

1 Thomas Sharkey
2 they could in order to make their money on
3 this whole deal, especially this Mr. Rizzo,
4 because to ask me to ask my family for \$4,000
5 and then pay \$200 a month, I am sure he wanted
6 his little cut in on the deal. And calling me
7 at work constantly and harassing me, I just
8 think that the main reason for his position is
9 to make money for himself off of other
10 people's misfortune.

11 Q. Do you have any evidence that you
12 paid any amount to Forster & Garbus or Midland
13 Funding that you did not, in fact, owe?

14 A. I paid the sheriff's department.

15 Q. Okay.

16 Do you have any evidence that you
17 paid the sheriff's department any money that
18 you did not, in fact, owe?

19 A. I don't have evidence either way.
20 All I know is that, as far as I was concerned,
21 there was no more debts and I wasn't paying
22 \$500 a month, plus more at the end, close to
23 \$8,000 I wound up paying, which I am sure
24 Mr. Rizzo got a nice little chunk of change
25 from.

1 Thomas Sharkey

2 Q. Do you allege that you were
3 emotionally damaged by Forster & Garbus'
4 activities?

5 MR. FRANK: Objection to the form
6 of the question.

7 When you reference your
8 allegations, this implicates our legal
9 theories.

10 Please answer the question if you
11 can based on your layman's understanding
12 of the question.

13 Q. You can answer.

14 A. If you mean was I stressed out by
15 them, very much so.

16 Q. Okay.

17 Did you seek treatment in
18 connection with the stress caused by Forster &
19 Garbus?

20 A. No.

21 Q. What false statements do you
22 believe independent of what you may have been
23 told by your attorneys that Forster & Garbus
24 made to the State Court in connection with
25 your litigation involving Midland Funding and

1 Thomas Sharkey
2 Midland nor Forster & Garbus made a regional
3 effort to verify Mr. Sharkey's purported debt
4 before harassing him and filing suit."

5 Then it says, "Although
6 defendants assert the purported debt was
7 purchased from Bank of America, upon
8 information and belief, Midland Funding does
9 not possess and has never possessed (nor ever
10 seen) any documentary evidence supporting any
11 of the purported debt presumably purchased
12 from Bank of America."

13 Right?

14 A. Right.

15 Q. Again, if you look at Exhibit 2,
16 isn't Exhibit 2 a document, a documentary
17 evidence that supports the fact that you had a
18 debt with Bank of America?

19 MR. FRANK: Objection on the
20 basis of privilege.

21 Documentary evidence is a legal
22 term, and any conversations that you may
23 have had with your counsel regarding the
24 nature of evidence, what evidence is,
25 what evidence is available in this case

1 Thomas Sharkey
2 is privileged.

3 If you have any independent
4 understanding, please use it to answer
5 the question.

6 A. Okay, this is an April of 2009
7 statement. We have no way of knowing if there
8 was a computer error six years ago from Bank
9 of America for 6767.

10 Does Midland Funding have any
11 evidence to back this number here, 6767.20 up?
12 Do they have any evidence of that from Bank of
13 America that they can produce?

14 Q. So your allegation is you are --
15 sitting here today, is that Midland Funding
16 has no proof that you owed a debt to Bank of
17 America, they just don't have the proof that
18 you would like to see; is that correct?

19 A. You know what, my store --

20 MR. FRANK: Objection.

21 You would like to see is a little
22 contentious. Maybe we could phrase it
23 as a little bit less aggressive?

24 MR. CURTIS JOHNSON: Okay.

25 A. Repeat your question, please.

1 Thomas Sharkey

2 Q. Sure.

3 Isn't it true, sitting here
4 today, that your allegation is not that
5 Midland Funding did not have any documentary
6 evidence of your debt, but rather that they
7 didn't have the documentation that you would
8 expect them to have when they to tried to
9 collect your debt?

10 MR. FRANK: Objection to the form
11 of the question, as to whether we have
12 documentary evidence.

13 Q. You can answer.

14 A. You have one piece of paper right
15 here, okay. In my store, we have printed out
16 mistakenly balances for some of my customers,
17 okay. Mistakes happen. This is from 2009, a
18 mistake could have happened.

19 This cannot be the right number.
20 So what I am saying to you is, they don't have
21 enough, okay. Anyone can print out a paper.
22 I can print out a paper, one of my customers,
23 Mr. Schwartz, owes me \$67,000, when they owe
24 me \$678. You want to go back and show me
25 proof, show me proof. Do they have it? I

1 Thomas Sharkey
2 plaintiffs involved in this litigation?

3 A. No.

4 Q. I would like to refer back to
5 Exhibit 2, which is this Bank of America
6 statement?

7 A. (Witness reviewing.)

8 Okay.

9 Q. So we have talked about the fact
10 that this document says new balance total
11 \$6,959.54; is that correct?

12 A. Yes.

13 Q. Do you have any facts that you
14 would say disprove that that is the number
15 that you owed at the time this statement was
16 issued?

17 A. Quite frankly, from 2009, I don't
18 have any kind of evidence or facts.

19 Q. After looking at this document,
20 do you see what interest rate it says, annual
21 percentage rate for this billing period; do
22 you see an interest rate provided? It's about
23 halfway down the page.

24 A. Oh.

25 (Witness reviewing.)

1 Thomas Sharkey

2 not to answer.

3 MR. MATTHEW JOHNSON: We do
4 reserve the right to reopen this topic.

5 MR. FRANK: Please, by all means,
6 get us the bill of sale and assignment
7 of loans so we can talk about it. It's
8 a document in your office.

9 Q. Moving on to something different.

10 (Sharkey Exhibit 16, Document
11 bearing Bates stamp MCM-0667, marked for
12 identification.)

13 Q. Handing you what's been marked
14 Sharkey 16. Take a minute to review it,
15 please (handing).

16 A. (Witness reviewing.)

17 Okay.

18 Q. Have you had a chance to look at
19 it?

20 A. Yes.

21 Q. So this states primary name,
22 Thomas J. Sharkey, is that yourself?

23 A. Yes.

24 Q. And address, 606 Birch Hollow
25 Drive; as we discussed, that's your address?

1 Thomas Sharkey

2 A. Yes.

3 Q. The last four of your social, are
4 those accurate?

5 A. Yes.

6 Q. The two phone numbers listed,
7 were they ever your number?

8 A. They are no longer my number.

9 Q. But those are numbers you
10 recognize as one time being yours?

11 A. They look familiar. I have had a
12 new number for a long, long time.

13 Q. And the next line is sale amount,
14 \$6,959.54. And do you remember seeing that
15 number earlier today in the other exhibits
16 we've looked at?

17 A. I saw that on the exhibits. I
18 don't necessarily agree with the amount.

19 Q. Okay.

20 Do you have any facts that would
21 cause you to disagree with that amount?

22 A. I do not. That's many years ago.
23 I do not have any documents.

24 Q. And if you look at it, it says,
25 original account number, the last four digits

1 Thomas Sharkey

2 are 1898?

3 A. I could not tell you.

4 Q. It's the third line down, says,
5 original account number?

6 A. Right. I don't remember the
7 account number.

8 Q. Okay.

9 Then if you look at Sharkey, I
10 believe it's 2 --

11 A. I'm sorry.

12 Q. If you look at Sharkey Exhibit 2?

13 A. (Witness reviewing.)

14 Q. We looked at that earlier. It
15 had a string of numbers.

16 A. I got it. Yes, okay.

17 Q. Do you see the last four digits
18 in that string of numbers towards there?

19 A. On the bottom, 1898?

20 Q. Does that match original account
21 number from Exhibit 16?

22 A. Yeah, 1898. Yes.

23 Q. As long as you are looking at 2,
24 does that have the same balance total as the
25 sale amount in Exhibit 16?

1 Thomas Sharkey

2 A. (Witness reviewing.)

3 Let me see.

4 It does.

5 Q. If you look down -- back to 16,
6 Exhibit 16, you see birthday, it has a year
7 1957; is that the year of your birth?

8 A. Yes.

9 Q. If you look at the bottom, I will
10 read across the bottom in print says, "Data
11 provided (sic) by Midland Credit Management
12 from electronic records" --

13 A. It's printed.

14 Q. "Data printed by Midland Credit
15 Management Inc., from electronic records
16 provided by FIA Card Services, NA, pursuant to
17 the bill of sale/assignment of accounts dated
18 March 28, 2011 in connection with the sale of
19 accounts from FIA Card Services, NA to Midland
20 Funding, LLC."

21 Did I read that accurately?

22 A. Yes.

23 Q. What is your understanding of the
24 meaning of that paragraph?

25 A. Saying that they sold my debt

1 Thomas Sharkey

2 Q. So did you, in fact, pay that
3 \$6,959.54 to FIA Card Services or Bank of
4 America?

5 A. Whether I did or didn't, it has a
6 credit symbol right here and tells me I owe
7 nothing. Payment due, zero.

8 Q. And does it say that you paid it
9 or does it say charge-off adjustment?

10 A. It doesn't say. It just says
11 payment due, zero, and says credit.

12 Q. Do you believe that was money --
13 the debt disappeared?

14 MR. FRANK: Objection to the form
15 of the question, disappeared.

16 A. I can only tell you what I see in
17 black and white here. I see a credit for
18 6,959.54 and past due amount, zero and payment
19 due, zero. That's all I can tell.

20 Q. What do you think happened to
21 that debt?

22 A. I think that Bank of America
23 wrote it off as a bad debt.

24 Q. Do you think --

25 A. Go ahead.

1 Thomas Sharkey

2 Q. Go ahead, sorry.

3 A. And then they tried to sell a bad
4 debt that they had already written off to
5 Midland Funding.

6 Q. Do you think Bank of America has
7 a right to sell a debt that they have written
8 off as a bad debt?

9 A. I do not.

10 Q. Do you think that it's wrong for
11 Bank of America to sell a debt that they have
12 written off as a bad debt?

13 A. Absolutely, especially when I
14 suffered consequences already with my credit
15 score and when I tried to make payment
16 arrangements with them, absolutely.

17 Q. Why do you think it's wrong for
18 them to sell a bad debt to somebody else?

19 A. Because this was between me and
20 Bank of America. I tried to make arrangements
21 with them. I -- when I was able to do it
22 before misfortune came upon me, I paid my
23 debts. I paid my consequences with my credit
24 score. I tried to manage arrangements with
25 them. So I don't think they had any right. I

1 Thomas Sharkey
2 (Sharkey Exhibit 19, Document
3 bearing Bates stamp MCM-0601 through
4 MCM-0603, marked for identification.)
5 Q. Handing you what's been marked
6 Sharkey 19. If you can take a minute to look
7 at that (handing).
8 A. (Witness reviewing.)
9 Q. Are you ready?
10 A. Okay.
11 Q. So this is a letter. Heading
12 says MCM, dated March 31, 2011.
13 Is this letter addressed
14 correctly to you?
15 A. Yes.
16 Q. That was your residence on
17 March 31, 2011?
18 A. Yes.
19 Q. Do you remember receiving this
20 letter?
21 A. It's possible. I don't remember
22 this exact letter. It's possible.
23 Q. And earlier I believe you
24 testified that you received a letter from
25 Midland; is that accurate?

1 Thomas Sharkey
2 addressed to MCM and not the previous owner."

3 Is that accurate?

4 A. You read that properly, yes.

5 Q. The next paragraph states "Unless
6 you notify MCM within 30 days after receiving
7 this notice that you dispute the validity of
8 the debt or any portion thereof, MCM will
9 assume this debt to be valid."

10 Is that correct?

11 A. You read it correctly.

12 Q. Did you notify MCM of any
13 disputes of the validity of the debt?

14 A. No.

15 Q. Under the terms of that
16 paragraph, what do you believe MCM would do if
17 you did not dispute the debt?

18 A. I didn't know. I really did not
19 know.

20 Q. The next paragraph "If you notify
21 MCM in writing within 30 days after receiving
22 this notice that the debt or any portion
23 thereof is disputed, MCM will obtain
24 verification of the debt or a copy of a
25 judgment (if there is a judgment) and MCM will

1 Thomas Sharkey
2 mail you a copy of such verification or
3 judgment."

4 Is that accurate?

5 A. You read it correctly, yes.

6 Q. Is verification of a debt what
7 you wanted?

8 MR. FRANK: Objection to the form
9 of the question.

10 When?

11 Q. As we sit here today, you seem to
12 be upset that the debt wasn't properly
13 validated to you; is that accurate?

14 MR. FRANK: Objection to the form
15 of the question.

16 Characterizes the witness' mental
17 state.

18 Q. You can answer.

19 A. As far as I was concerned, this
20 whole matter was taken care of and from the
21 piece of paper that we looked at today, it
22 indeed said balance due, zero.

23 Q. So when you got this letter, did
24 you consider that debt invalid, the Bank of
25 America debt?

1 Thomas Sharkey

2 A. Yes.

3 Q. And did you take any steps to
4 request validation of the debt as outlined on
5 page 2 of this letter to you?

6 A. No.

7 Q. Why not?

8 A. Because as far as I was
9 concerned, I had been through enough. I had
10 dealt with Bank of America. It was taken care
11 of and they were selling it to another party
12 after it has a zero balance and I didn't want
13 to respond to it.

14 Q. Did you realize that this letter
15 was saying that they were threatening to take
16 legal action against you if you didn't pay
17 this debt that they said you owed?

18 A. Um-hum.

19 Q. So you knew by ignoring this
20 letter you were risking having legal action
21 brought against you?

22 A. I really honestly did not think
23 they would do that. Again, I really did not
24 think they would do anything.

25 Q. Why did you think they wouldn't

1 Thomas Sharkey

2 Q. But you never did contact Midland
3 Credit Management or Midland Funding about
4 that?

5 A. No.

6 Why did they resurface years
7 after? I mean...

8 MR. FRANK: Let him...

9 (Sharkey Exhibit 20, Document
10 bearing Bates stamp MCM-672 and ending in
11 MCM-685, marked for identification.)

12 Q. So I am handing you what's been
13 marked Sharkey 20 (handing).

14 A. (Witness reviewing.)

15 Q. This is a document starting at
16 MCM-672 and ending in MCM-685. Just take a
17 second and flip through it. You don't have to
18 read everything.

19 I will ask you some questions
20 about the first two pages. If you look at
21 page 1 of Sharkey 20, it's titled Customer
22 Additional Data. I will represent to you that
23 this is data from Midland Credit Management
24 internal system that is provided in discovery
25 to your counsel.

1 Thomas Sharkey

2 Q. SSN?

3 A. Yeah, okay. Go ahead.

4 Q. Those are your social?

5 A. Yes.

6 Q. If we go up ahead two pages to
7 page marked MCM-675?

8 A. (Witness complying.)

9 Q. Page is entitled Bureau Reports
10 by Reporting Date?

11 A. Um-hum.

12 Q. Do you remember during this time
13 period, this runs from May 18, 2011 through
14 May 28, 2014, did you ever happen to review
15 your credit history?

16 A. What dates?

17 Q. May 18, 2011 through May 28,
18 2014.

19 A. I may have when I went for a car
20 loan.

21 Q. Do you remember ever seeing this?

22 A. This piece of paper?

23 Q. No. No. Do you remember ever
24 seeing this Bank of America account on your
25 credit history either as Bank of America

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Thomas Sharkey

account or a Midland Funding account?

A. No.

Q. You can set that aside.

A. (Witness complying.)

Q. You mentioned earlier that you were injured in a car accident in the '90s, the late '90s?

A. Yes.

Q. Just generally, what sort of injuries were they?

A. It was my back.

Q. You stated earlier, I believe, you received collection letters on other debts, specifically medical debts, correct?

A. Yes.

Q. On those other debts, you paid those debts when you got collection letters?

A. On the medical debts, yeah.

Q. Did you ever consider appealing the judgment that Midland Funding obtained against you?

A. Did I ever consider appealing it?

Q. Yes.

A. No.

1 Thomas Sharkey

2 MR. FRANK: Off the record.

3 (Discussion held off the record.)

4 BY MR. MATTHEW JOHNSON:

5 Q. So we just passed around
6 Sharkey 21.

7 If you pull up to Request for
8 Admission Number 29, which is on page 15?

9 A. (Witness complying.)

10 Q. So this says "Admit that you have
11 no evidence that Midland furnished false
12 information concerning your Bank of America
13 account to any credit reporting agency."

14 And your response, "Plaintiff
15 objects to this request on the ground that
16 plaintiff has not had sufficient opportunity
17 to complete its investigation and discovery.
18 Subject to and without waiving his general and
19 specific objections, plaintiff states as
20 follows: Deny."

21 Is that accurate? Did I read
22 that accurately?

23 A. Yes.

24 Q. And what evidence do you have
25 that Midland furnished false information

1 Thomas Sharkey
2 concerning your Bank of America account to any
3 credit reporting agency?

4 A. I don't have any physical
5 evidence.

6 Q. Do you have any other kind of
7 evidence?

8 A. No.

9 Q. If we look at 31?

10 A. (Witness reviewing.)

11 Q. States "Admit that you have no
12 evidence showing that Midland violated
13 Section" -- I'm sorry. I will wait for you.

14 A. Oh.

15 Q. "Admit that you have no evidence
16 showing that Midland violated Section 1692e of
17 the Fair Debt Collection Practices Act as
18 alleged in paragraph 102 of your amended
19 complaint."

20 I will just tell you that 1692e
21 that's referred to here, that bars the making
22 of false or misleading representations in
23 connection with the collection of a debt.

24 A. Um-hum.

25 Q. Now, as far as Midland Funding or

1 Thomas Sharkey

2 yes, I do.

3 Q. Having seen the terms and
4 conditions of your account and the updated
5 terms and conditions of your account and the
6 two letters from Bank of America, statements
7 regarding your account that Midland produced,
8 do you believe that Midland lacks sufficient
9 basis to bring a lawsuit to collect your debt?

10 MR. FRANK: Objection to the form
11 of the question.

12 Assumes that the document showed
13 to the witness was related to his
14 account.

15 You may answer.

16 A. The question again?

17 (Record read.)

18 A. Yes, I do believe.

19 Q. Why do you believe Midland lacks
20 sufficient basis?

21 A. I keep repeating the same thing
22 over and over and over again. I paid -- I
23 dealt with Bank of America. I offered to make
24 payment arrangements with them. I waited for
25 an answer from a supervisor, the supervisor

1 Thomas Sharkey
2 said they cannot accept that. I was going
3 through a lot of things in my life and that's
4 what I could afford to give.

5 I had to prioritize the things I
6 need in my life, so therefore, I offered to
7 make a certain amount of a payment. They said
8 let me call my supervisor, call you back.
9 That's what they told me, we are writing this
10 off as a bad debt.

11 I said, what does that mean, and
12 they said that means that we are writing it
13 off. And they said we are not instituting any
14 kind of legal action against you, but it is
15 definitely going to affect your credit score.
16 They did not say that they were going to sell
17 it to another company.

18 Q. So do you think when they turned
19 down the offer of \$50 a month they would
20 accept an offer of zero dollars a month and
21 say --

22 MR. FRANK: Objection.

23 Calls for speculation.

24 Q. Do you think it's reasonable to
25 believe that when they turned down -- is it

1 Thomas Sharkey
2 correct to say they turned down your offer of
3 \$50 a month?

4 A. They did turn it down, yes.

5 Q. Do you think that instead of \$50
6 a month they are offering zero dollars a
7 month?

8 MR. FRANK: Objection.

9 A. No.

10 MR. FRANK: It's a contentious
11 question.

12 Also, it has a time assumption
13 that these events occurred all at the
14 same time.

15 You can answer.

16 A. I offered what I could pay at the
17 time. And what you are saying to me, do you
18 think that they would accept zero dollars a
19 month, is really not a good question at all,
20 because I wouldn't offer someone zero dollars
21 a month. I was offering them what I could
22 afford. I had to take care of myself, my son.
23 I had a lot of things going on in my life,
24 that's it.

25 Q. Does the fact that they turned

1 Thomas Sharkey
2 down \$50 a month imply to you that they felt
3 you still owed a debt?

4 MR. FRANK: At the time that they
5 turned down the offer?

6 MR. MATTHEW JOHNSON: Yes.

7 A. At the time they turned down the
8 offer, I still owed them the debt. I tried to
9 make some type of arrangement with them.

10 Q. Do you know what the difference
11 between Midland Funding, LLC and Midland
12 Credit Management, Inc. is?

13 A. I don't.

14 Q. When you received the collection
15 letter from Midland, actually, from Midland
16 Credit Management that we discussed, did you
17 show that to anybody else?

18 A. Not that I recall.

19 Q. Would you have read it carefully;
20 do you know if you did?

21 A. I don't remember.

22 Q. Have you ever requested that a
23 debt collector provide validation of a debt?

24 A. No.

25 Q. Going forward to paragraph 78,

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C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

I, CINDY A. AFANADOR, a Notary
Public within and for the State of New
York, do hereby certify:

That THOMAS SHARKEY, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that such
deposition is a true record of the
testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 29th day of
July, 2015.

CINDY A. AFANADOR